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the development of power (*Winchell v. Clark*, 68 Mich. 64; *Bardwell v. Ames*, 22 Pick. (Mass.) 333), are all examples of such riparian rights as can be alienated separately from the upland. On the other hand, those riparian rights which depend upon the fact that the land to which they are incident touches the water cannot be separated from the upland. The right to alluvium (*Railroad v. Platt*, 52 Ohio St. 257) and the right to gather seaweed from the beach (*Phillips v. Rhodes*, 7 Met. (Mass.) 322) have been held to be inseparably incident to the mainland. Under this head comes the right to use the water for various purposes on the adjoining land. As a general rule, this use must be incident to the riparian land, and it cannot be transferred to one who is not a riparian owner if the rights of other riparian proprietors will be prejudiced. *Stockport Waterworks Co. v. Potter*, 3 Hurlst. & C. 300; *Gould v. Eaton* 117 Cal. 539; *Higgins v. Flemington Water Co.*, 36 N. J. L. 538.

WATERS—INTERFERENCE WITH RIGHT TO FORD.—Plaintiffs' farm was crossed by a river, and at a shallow place they had established a ford from one part of their farm to the other. Defendant company maintained a power house on the river above the plaintiffs' farm; and, by changing the arrangement of its water gates, doubled, at certain periods, the amount of water in the stream. At these high-water periods plaintiffs' ford was impassable and plaintiffs sued for this injury. *Held*, that plaintiffs should recover. *Fewell v. Catawba Power Co.* (S. C. 1915), 86 S. E. 947.

These facts present an unusual situation, as a lower proprietor is complaining of the act of an upper owner in raising the level of the stream. The owner of land through which a stream flows may increase the volume of water by draining into it without any liability in damages to a lower owner. *Miller v. Laubach*, 47 Pa. St. 154; *McCormick v. Horan*, 81 N. Y. 86. This right is subject to the qualification that an owner cannot by artificial means collect surface waters and discharge them into the stream beyond its natural capacity to the damage of lower owners. *Noonan v. City of Albany*, 79 N. Y. 470; *Jackman v. Arlington Mills*, 137 Mass. 277; *Mayor of Baltimore v. Appold*, 42 Md. 442. However, this analogy will not justify the act of the defendant in the principal case, as the stream was not increased in the exercise of the right of drainage. The defendant's position is more nearly that of one who sets back-water on an upper proprietor by means of a dam. It seems to be well established that a riparian proprietor has no right to throw water back upon the upper proprietor. *Chapman v. Thames Mfg. Co.*, 13 Conn. 269; *Heath v. Williams*, 25 Me. 209; *Casebeer v. Mowry*, 55 Pa. St. 419; *Pixley v. Clark*, 35 N. Y. 520; *Rhodes v. Whitehead*, 27 Tex. 304; *Treat v. Bates*, 27 Mich. 390. It is not necessary that land be overflowed or a nuisance created or any appreciable damage committed, but a cause of action arises as soon as the water is raised above its ordinary level on the land of the upper proprietor, even though the stream does not go above its banks. *Amoskeag Co. v. Goodale*, 46 N. H. 53; *Graver v. Sholl*, 42 Pa. St. 58; *Stout v. McAdams*, 3 Ill. 67; *Wright v. Moore*, 38 Ala. 593; *Ripka v. Sergeant*, 7 Watts & Serg. (Pa.) 9; *Cory v. Silcox*, 6 Ind. 39; see

note to *Barnard v. Shirley*, 41 L. R. A. 737, 749. In *Hill v. Ward*, 7 Ill. 285, interference with a ford formed part of the cause of action, and in *Harmon v. Carter* (Tenn. Ch. App. 1900), 59 S. W. 656, the sole injury complained of was making a ford impassable by water thrown back by a dam. The instant case would seem to give the lower proprietor the right to have the volume of the stream remain constant unless the increase is due to a reasonable exercise of the right of drainage on the part of an upper proprietor, as it does not appear that the stream was raised above its banks on the plaintiffs' land. In its opinion the court pays little attention to the nature of defendant's wrong, but rather lays emphasis on the character of plaintiffs' right. In commenting on one feature of this right, the court said: "The particular right of the plaintiffs alleged to have been breached by defendant is the (un)hindered opportunity to pass from one place to another on their own land. \* \* \* If they own the land under the water (called the ford), they have the right to use it for a passage unobstructed by high waters." If an owner has a right to be free from obstructions passing over the surface of his land from other property, 1 TIFFANY, REAL PROP., § 217, it does not seem unreasonable that he should have the right to be free from obstructions on the surface. This, however, is an unusual way of approaching this class of cases.

WILLS—WHAT CONSTITUTES ACTUAL MILITARY SERVICE UNDER THE ENGLISH WILLS ACT.—At the conclusion of the Waziristan operations on the frontier of India in 1895, a portion of the force remained in the Tochi Valley as an escort to the party engaged in the delimitation of the frontier. The testator was a lieutenant in an Indian regiment forming part of this escort. While so serving he was mortally wounded by a fanatic, and was carried into camp, where he dictated a will to his brother-in-law, whom he made his residuary legatee. The testator died the next day. The will was signed by the testator and attested by his brother-in-law and another officer as witnesses. His estate consisted of personalty only. *Held*, that the testator was in "actual military service," within the meaning of § 2 of the WILLS ACT, 1837, at the time when he made his will. *Limond v. Cunliffe* [1915], 2 Ch. 240.

§ 2 of the WILLS ACT, 1837, provides that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act. The law prior to the Act allowed a soldier to dispose of his personalty by a will, no attestation of which was required at all. 1 SWINBURNE, TESTAMENTS (7th ed.), 94. The same privilege is now allowed them by statute in many of the states in this country. A decision as to what constitutes "actual military service" is at this time peculiarly applicable and interesting under the present war conditions. The court said, "For the purpose of determining whether a soldier is in 'actual military service,' the commencement of the military service is the time when mobilization takes place. It does not cease until the full conclusion of the operations and also extends to those things which are incidental to the war in question." Such was the situation here. The war had ceased, and this soldier was killed while his regiment was serving as an